

EXHIBIT C

Oklahoma-Arkansas Dispute Exposes National Problem

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A lawsuit filed by the Oklahoma Attorney General against Arkansas poultry farms over pollution of the Illinois River is one of many new interstate environmental disputes growing out of relaxed federal enforcement. State and local governments increasingly reach beyond their borders to control pollution that they say the federal government should have prevented.

This controversy is detailed in an August 28 Washington Post story by Juliet Eilperin. The Natural Resources News Service developed the idea for the story and provided examples of interstate environmental disputes to the Post.

Oklahoma's complaint, filed last year, seeks injunctive and monetary relief from 14 large food processing companies in Arkansas. Oklahoma says the companies dispose of poultry waste by piling it on fields in large amounts that belie their claim that it is meant to be fertilizer. "They're not fertilizing; they're dumping," Oklahoma Attorney General Drew Edmondson told Eilperin.

The Illinois River draws large crowds of canoeists, fishermen, and other nature lovers to its wooded banks and feeds the once clear Lake Tenkiller. Oklahoma calls Tenkiller its "crown jewel of lakes." People used to come from hundreds of miles to scuba dive there. Recreation from the Illinois River is worth more than \$50 million per year to Oklahoma, according to Ed Fite of the Oklahoma Scenic River Commission.

But Fite regrets that the river is now cloudy all year, fish die from anoxia, and the whole thing becomes a putrid foul-smelling mess in the spring and fall when the algae turns over. Most people wouldn't know they were swimming in chicken excrement if it weren't for the algae which thrive in the nutrient-rich water of the Illinois River. "It's not very appetizing," Fite grieves. "People don't want to get in it."

The Arkansas attorney general jumped into the case on the side of the large companies located within its borders, saying Oklahoma had no right to regulate the application of fertilizer in Arkansas. The defendants, mostly familiar public companies like Tyson Foods, constitute a large part of the Arkansas economy and job base.

The dispute recently became a boon for Oklahoma law firms when the food processor defendants persuaded the court to draw more than 100 third-party defendants into the growing melee. These were businesses in Oklahoma that also allegedly discharge nutrients into the Illinois River, according to some of the Arkansas poultry companies.

The dispute is also at the center of a lobbying effort by agricultural interests to push through an agricultural exemption to Superfund. Farmers for Clean Air and Water represented by the Livingston Group in Washington D.C. has obtained at least 177 cosponsors to the bill introduced by Rep. Ralph Hall (R-Tex.).

Edmondson says he was dismayed to learn that farm lobbyists were using Oklahoma's case against the Arkansas poultry companies to justify their pursuit of an exemption to Superfund. And he was furious over what he believes is the dishonesty of pretending that Big Agriculture feels the pain of small family farms.

That would be a travesty for hundreds of rivers dying of agricultural pollution across the country, according to environmentalist David Franklin. "The bill would take away all incentive for them to do anything about it."

One thing no one disputes is that the cost of fixing the problem will be high. Attorney General Edmondson acknowledges that the 14 food processors he is suing will face a significant competitive disadvantage if he wins.

Edmondson says he regrets that a victory for his side will raise the cost of Arkansas poultry by 10 cents a bird in a market where fractions of a penny mean precious market share. "This is a national problem, and there really should be a national solution applied equally to everyone," Edmondson complains.

But a solution is not likely to come from Washington these days, says Eric Schaeffer, former director of EPA's Office of Regulatory Enforcement. "Water pollution enforcement against factory farms has been at least difficult or impossible since around 2001 or 2002," he says. Schaeffer now heads the Environmental Integrity Project in Washington after leaving EPA in February 2002 because he said he was sick of weak support for environmental enforcement from the administration.

The struggle between Oklahoma and Arkansas is one of at least 9 other interstate disputes (detailed below) that have arisen as a result of EPA's relaxed enforcement under the Bush Administration to control air and water pollution. Schaeffer says that, like water pollution, air pollution enforcement, "especially against coal-burning power plants, has become almost impossible under the Bush administration."

Water Disputes:

- The city of Waco, Texas settled a claim in January 2006 against 14 dairies outside of the city's limits whose waste was polluting the Bosque Watershed, a major source of drinking water for the city. The terms of the settlement were different

for each dairy. Some agreed to halt operations entirely while others agreed to a wide range of pollution controls, according to the city's outside counsel Roy Lee Barrett of Namen, Howell, Smith and Lee. The case is *City of Waco v. Schouten, et. al.*, United States District Court, Western District of Texas, no. w04-ca-118.

- Montana is defending water standards it recently implemented which would force energy companies operating in Wyoming to clean up pollution from underwater mining operations. Montana aims to reduce the salinity of river water coming from Wyoming where gas wells in coal-bed formations were discharging subterranean salt water into the Big Horn River. Pennaco Energy, Inc., Marathon Oil Company, and Devon Energy, all Wyoming well operators, filed suit against the Environmental Protection Agency seeking an order to invalidate the agency's approval of Montana's water regulation. Wyoming intervened on the side of its energy companies contending that Montana's water quality regulations violate Wyoming's sovereignty. The case is *Pennaco Energy Inc., et. al. v. United States Environmental Protection Agency*, United States District Court, District of Wyoming, no. 06-cv-0100-b.

- Kentucky is threatening action against Virginia strip mines and the Army Corps of Engineers. The US Army Corp and the Virginia Department of Mines, Minerals and Energy are in the process of approving a request by CONSUL Energy, a coal mining company operating in the western part of Virginia, that would allow CONSUL to discharge a billion gallons of briny mine water into the Lavis Fork River eight miles from the Kentucky border. Kentucky Assistant Attorney General Scott Porter says, "Our position is that the permitting decision is being made without adequate consideration of the effect that the discharge will have on Kentucky waterways." In addition to not adequately assessing the proposed discharge from a water quality standpoint, Kentucky is concerned that Virginia and the Army Corp of Engineers are also not "considering the impact of the volume of water that is going to be discharged into Fish Trap Reservoir." Mike Abbott, spokesman for the Virginia Department of Mines, acknowledged that Virginia was aware of Kentucky's concerns. "The comments we received from Kentucky at our public hearing are being reviewed. This is a work in progress," he said.

- New York and Connecticut have gone to federal court seeking an order to make EPA issue water standards that will protect those states from upstream polluters and eliminate the competitive disadvantage that businesses in Connecticut and New York suffer as a result of the relaxed regulations in neighboring states. The plaintiffs challenged EPA's April 2004 decision not to finalize rules that would have controlled storm water runoff from construction sites, according to New York Assistant Attorney General Philip Bein. "The reason for effluent limitation guidelines was to avoid a race to the bottom among states," Bein said. As a result of EPA's inaction, storm water runoff from out-of-state construction sites without effluent guidelines were contributing to pollution problems in New York and Connecticut and putting businesses in those states at a competitive disadvantage. The case is *Natural Resources Defense Council et. al., and State of New York, et. al., v. Environmental Protection Agency, et. al.*, United States District Court for the Central District of California, no. cv04-8307.

Air Disputes:

- New York, Pennsylvania, Connecticut, New Jersey, and Maryland, sued Allegheny Energy, a Western Pennsylvania power company, in June 2005 to reduce its air pollution after EPA's new source review determined that plant modifications did not require the company to meet tight air pollutions controls that apply to new sources of pollution. The plants were previously under investigation by EPA but the investigation was called off by the Bush Administration. Attorney General Blumenthal of Connecticut attributes the necessity of this lawsuit to the lack of federal enforcement. "We waited for the federal government to act responsibly and now must fill the vacuum left by its surrender to special interests," he said in a press release. The case is *Commonwealth of Pennsylvania, et. al. v. Allegheny Energy, Inc, et. al.*, U.S. District Court for the Western District of Pennsylvania, no. 05cv0885.

- New York, Connecticut, New Jersey, and Pennsylvania, led by Elliot Spitzer of New York, announced their intention to sue Allegheny Energy plants in West Virginia, but Allegheny preempted the suit with a suit of its own against New York, New Jersey and Connecticut. That case is *Allegheny Energy Supply Company, LLC & Monongahela Power Co. v. Spitzer et. al.*, U.S. District Court for the Northern District of West Virginia, no. 1:05cv00004.

- Connecticut, New York, California, Iowa, New Jersey, Rhode Island, Vermont, Wisconsin and the City of New York filed suit July 2004 against six power companies in 20 states contending that their annual release of 650 millions tons of carbon dioxide is a public nuisance. The case was dismissed in September 2005 and is now on appeal. The case is *State of Connecticut et. al. v. American Electric Power Company, Inc. et. al.*, U.S. Court of Appeals, Second District, no. 05-5104cv.

- A suit before the Supreme Court over whether EPA is required to regulate carbon dioxide emissions under the Clean Air Act pits 12 states against the EPA. Eleven states with vital energy and auto making interests have sided with EPA. EPA's denied a petition, filed by several environmental groups in 1999. The environmental groups had asked that regulatory standards be set for carbon-dioxide emissions from cars and power plants. Massachusetts, California, Connecticut, Illinois, Maine, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington filed suit in the United States Circuit Court for the District of Columbia seeking an order to force EPA to set the standards. Michigan, Texas, Idaho, North Dakota, Utah, South Dakota, Alaska, Kansas, Nebraska, and Ohio then intervened on EPA's side. The case (*Massachusetts et. al. Petitioners v. United States Environmental Protection Agency*, Respondent, U.S. Supreme Court, no. 05-1120) will be heard this fall.

- North Carolina is directly attacking the federal government in the form of the Tennessee Valley Authority, which produces electricity for Tennessee, Alabama and Kentucky. North Carolina Attorney General Roy Cooper is seeking a court order to require the Tennessee Valley Authority to lower its emissions to levels required for power plants in North Carolina under the North Carolina Clean Smokestacks Act (*State of North Carolina v. Tennessee Valley Authority*, U.S. District Court for the Western District of North Carolina, Asheville Division, no. 06-cv-00020). TVA is a federally owned corporation based in Knoxville. It operates power plants in Tennessee, Alabama, and Kentucky. Cooper says the pollution is a public nuisance because it causes more than 15,000 illnesses in North Carolina annually. A New York Times editorial on March 4, 2006, said the situation was a result of Bush's relaxation of air pollution enforcement. "Mr. Cooper called the public lawsuit a 'last resort' arising from the administration's weakening of longstanding regulatory tools that had been used to make individual plants clean up their emissions," according to the editorial.

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